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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in the former Yugoslavia

Report of Mr. José Cutilero, Special Representative of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina and the Federal Republic of Yugoslavia

Addendum

Update, covering the period December 2001-February 2002

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Addendum

Bosnia and Herzegovina

1. The Special Representative undertook his second trip to Bosnia and Herzegovina from 10 to 15 February 2002, visiting the Federation and the Republika Srpska. He met with members of the Government of Bosnia and Herzegovina and the Entity Governments; the High Representative; senior officials of international organizations; and interlocutors from civil society and domestic human rights institutions.

2. The return of refugees and displaced persons in 2001 was greater than in previous years. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), 2001 saw the highest number of returns since the signing of the Dayton Peace Agreement, with over 92,000 registered minority returns, including 47,156 Bosniacs, 34,189 Serbs and 9,587 Croats. It is predicted that this trend will extend into 2002. As this process continues, the Special Representative underscores the need to protect the rights of persons who voluntarily choose not to exercise their right to return. It is noted that there is no mechanism to track the number of persons who return to repossess and sell their properties. This might be indicative of the extent to which returns are permanent.

3. The Special Representative takes note of the fact that the property legislation implementation rate in the Republika Srpska as at the end of 2001 is a mere 30.64 per cent and at the end of 2000 it was 13.21 per cent. Although less than one third of the problem has been solved, in the past year the Government has achieved more than has been achieved in the previous four years.[1] Both Entities have much to do to fulfil their legal obligations, as the Federation implementation rate has reached only 49.40 per cent.[2] Nonetheless, the Special Representative welcomes the stated intention of the President of the Republika Srpska to have the Republika Srpska rate reach at least 50 per cent by the end of this year.

4. The increase in returns in Bosnia and Herzegovina further highlights the contrasting non-return of Serb refugees to their places of origin in Croatia. After his visit to Banja Luka, the Special Representative called upon the Republic of Croatia to redouble its efforts to remove obstacles to refugee return or redress, which would also serve to accelerate the return process inside Bosnia and Herzegovina. Statistics on the number of Croatian Serbs currently residing in the Republika Srpska are still in dispute. Given that registration is a voluntary process, there is reason to believe that many people feel that registration is a pointless exercise.

5. The Special Representative notes that property return is a necessary but not sufficient condition for voluntary and sustainable return. It is encouraging that interlocutors in the Government and civil society indicate some understanding of the State's responsibility for ensuring the enjoyment of all rights, as being indivisible and interrelated. Needed improvements in education, social security and health protection would promote, inter alia, the sustainability of returns. Economic regeneration is a priority and the Government should ensure the involvement of all relevant actors in the development of the Poverty Reduction Strategy Paper.

6. In the area of health care, the Entities must ensure implementation of the Agreement on the Manner and Procedure of Using Health Care Service Insurees in the Territory of BiH outside

the Territory of the Entity, including Brcko District, in which they are insured. Despite the signing of this agreement in early December, returnees still have no access to health care in their return area.

7. The Special Representative welcomes the opening of the Sarajevo office of the Victims and Witness Section of the International Criminal Tribunal for the Former Yugoslavia, and takes this opportunity to point out that victims and witnesses include many extremely vulnerable persons who have fallen through the social safety net and have no access to their social and economic rights. This often intersects with the emotional trauma and connected social problems experienced by the families of the up to 30,000 missing persons from Bosnia and Herzegovina.[3]

8. While in the Republika Srpska, the Special Representative was provided with statistics for the level of minority representation in the police force which differ from those released by the United Nations Mission in Bosnia and Herzegovina (UNMIBH). The Special Representative would emphasize, despite any representations made, that the level of minority policing in either Entity remains only slightly more than negligible, and few if any minority officers are in positions of command or control.

9. Progress in the area of the judiciary remains slow. There is a need to develop an effective mechanism to hold judges accountable to high professional and ethical standards and to reduce the massive backlog of cases, thus re-establishing public confidence in the judiciary. The Special Representative recalls his statements in his report to the Commission and emphasizes the need for the governments, in conjunction with the Independent Judicial Commission, to push forward to ensure the creation of an independent, effective and non-discriminatory judicial system.

10. Trafficking in persons remains a serious problem in Bosnia and Herzegovina, making the recent adoption of the National Plan of Action timely. Priority must be given to implementing this initiative. Moreover, within certain ministries there appears to be insufficient comprehension of what comprises trafficking in persons and thus of how the problem should be addressed. Evidence suggests that this dearth of comprehension translates into the criminal prosecution of the victims of trafficking rather than of those who are responsible for their being trafficked.

11. The Special Representative commends the Bosnia and Herzegovina authorities for their determination to join in the international effort to fight terrorism. However, concerns have been expressed over the manner in which suspected terrorists have been stripped of their legal status and removed from the country in recent and controversial cases. In his meetings with government officials of both the State and Federation, the Special Representative received assurances that any future removal of citizenship would follow strict legal procedures and that full rights of appeal would be preserved.

12. The Special Representative would like to congratulate Bosnia and Herzegovina on the positive vote taken by the Council of Europe Parliamentary Assembly to allow the country to accede to the Council; he will observe closely the adherence by Bosnia and Herzegovina to the requirements laid down for it.

13. Whilst he was in Bosnia and Herzegovina, the Special Representative was informed by government officials of the State and both Entities that constitutional reform should be completed within the next few months, bringing the Entity constitutions into line with the Constitutional Court's Decision on Constituent Peoples. The Special Representative hopes that these statements will be realized; he will revisit the issue on his next mission.

14. Despite the advances made in the area of return and the promising statements made by the governments, the Special Representative remains cautious in his assessment of progress, especially when looking at long-term sustainability. Much has been done, but much more must be done.

15. Finally, the Special Representative welcomes the undertaking Bosnia and Herzegovina has made to commence reporting to the treaty bodies in 2002.

Federal Republic of Yugoslavia

16. The Special Representative undertook his second visit to the Federal Republic of Yugoslavia (FRY) between 31 January and 10 February 2002, visiting Montenegro, Serbia and Kosovo. He met with senior members of the FRY, Republic of Serbia and Republic of Montenegro governments; senior officials of the United Nations Mission in Kosovo (UNMIK), the OSCE and KFOR in Kosovo; and local political and community leaders and representatives of international organizations and local NGOs dealing with human rights issues throughout the region.

Serbia

17. In Serbia, the reform process continued to advance slowly, still hampered by the ongoing inability of Serbia and Montenegro to resolve the status of Montenegro within the federal structure and political disagreements among the principal members of the governing DOS coalition. The opening of the war crimes trial of former President Slobodan Milosevic in The Hague in February 2002 intensified tension over FRY cooperation with the International Criminal Tribunal for the Former Yugoslavia. And in a troubling reminder that Serbia's transition from the Milosevic era remains fragile, two grenades exploded in front of the headquarters of the party of FRY President Kostunica on 4 March 2000.

18. On a positive note, the Chamber of Citizens of the FRY Parliament adopted the Law on Protection of National Minorities on 25 February 2002. One notable achievement of the new law is that, for the first time in the history of Yugoslavia, the Roma are recognized as a national minority. New laws governing labour, autonomy for Vojvodina, and local self-government were also passed. In addition, the FRY ratified the Optional Protocol and acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, both important indications of the interest of the Government in incorporating all international human rights standards in domestic law. Regrettably, however, several other important laws, including laws to regulate the media and the Law on Cooperation with the International Criminal Tribunal for the Former Yugoslavia, are still in the drafting process.

19. Although the Serbian Ministry of the Interior has taken some positive steps to improve the behaviour of the police, particularly in southern Serbia, allegations of ill-treatment continue to surface. For example, in February 2002, police officers were accused of beating an 18-year old male in Novi Sad who had been sitting with friends on the top of a former fallout shelter, and a young man in Vrsac for allegedly participating in a car theft. The Special Representative is particularly concerned that high-ranking officials of the Ministry of the Interior have remained silent in these cases and do not appear to have initiated any internal or external investigations.

20. The unresolved situation of more than 400,000 refugees and 230,000 internally displaced persons (largely ethnic minorities from Kosovo) in the Federal Republic places a heavy burden on the State and has both a humanitarian and human rights dimension. Despite the many positive developments in the country, the Special Representative urges all actors, including international donors, to maintain their focus on and support for these vulnerable groups, particularly ethnic Serbs and Roma from Kosovo, whose present plight remains precarious and their long-term status unresolved.

21. In southern Serbia, the Special Representative was pleased to see renewed commitment on the part of the governments of Serbia and FRY with regard to confidence building vis-à-vis ethnic Albanian leaders. A United Nations agency assessment of progress on the commitments made by the FRY to the ethnic Albanian community, released in January 2002, identified a range of positive achievements, as well as several areas where improvements are necessary, including the need for more transparency in the processing of complaints of human rights violations and better cooperation between the authorities and the international community to achieve reintegration of ethnic Albanians into State service, the economy and society (to address past and current discrimination). An initiative by the OSCE FRY mission to create a Serb-Albanian round table involving government representatives and political representatives from the ethnic Albanian community helped to initiate new discussions. Deputy Prime Minister Covic welcomed the United Nations and OSCE initiatives and also met former commanders of the Presevo, Medvedja and Bujanovac Liberation Army (PMBLA) and ethnic Albanian political representatives in connection with the issue of amnesty for former PMBLA members. The promise not to prosecute former UCPMB members who had voluntarily given up their arms and uniforms before the June 2001 deadline was repeated in a new letter addressed to the North Atlantic Treaty Organization (NATO) by Dr. Covic. While the reiteration of the amnesty was an important confidence-building step, the Special Representative is concerned that the amnesty should be enforceable by law.

22. In another welcome development in southern Serbia, the government announced that the long-anticipated early municipal elections in Bujanovac, Presevo and Medvedja would be held on 15 or 16 June 2002.

23. The number of complaints of human rights violations or aggressive or provocative behaviour by the security forces has fallen since December and no serious allegations of ill-treatment have been received since October. However, there are concerns that complaints are not being communicated effectively by the ethnic Albanian community to the authorities and that, when they are delivered, the response is inadequate and slow. For example, complaints were promptly submitted concerning the beating of three ethnic Albanians searching for cattle

near Strezovce in October; a response was not, however, received until February. The authorities acknowledged the ill-treatment in their response, but reported that disciplinary measures and not criminal charges had been brought against the officers involved.

24. It is also a matter of deep concern that the second anniversary of the "disappearance" of Nebi Nuhiu passed without identification of his fate or whereabouts. Nebi Nuhiu, the owner of a fuel station in Presevo, was abducted on 2 February 2000. His family claims to be able to identify at least six police officers involved in his "disappearance", but the authorities have so far brought charges against only three officers. The charges against them relate to the extortion of money and not to abduction.

25. The Special Representative is concerned also by the lack of apparent progress in investigating the mass grave sites at Batjanica, on the outskirts of Belgrade. Despite the fact that 306 bodies have been exhumed to date, no real progress has been made in identifying the remains nor in investigating and prosecuting those criminally responsible for these acts.

Kosovo

26. The Special Representative notes two recent important political developments in Kosovo - the new Special Representative of the Secretary-General, Michael Steiner, took up his duties as head of the United Nations Interim Administration for Kosovo (UNMIK) on 14 February 2002, and the major Kosovo political parties formed a coalition government on 4 March 2002, electing a president and prime minister three months after province-wide elections for the first Kosovo parliament. The Special Representative welcomes these positive developments and urges the new international and local leaders to integrate human rights fully into UNMIK activities and the work of the new governing institutions. He repeats his concern that the post of Senior Human Rights Advisor to the Special Representative has remained unfilled since February 2000 and calls for closer working arrangements between UNMIK and the Office of the High Commissioner for Human Rights.

27. Three former members of the now-disbanded Kosovo Liberation Army were arrested just prior to the Special Representative's visit on allegations that they had committed serious crimes against Kosovo Albanians during the war. The arrests, the first of Kosovo Albanians accused of war crimes, sent the important message to all residents of Kosovo that no one will have impunity for the commission of war crimes, crimes against humanity or other violations of international human rights standards. During the visit, organized street demonstrations protesting the arrests turned violent. The international community took the unusual step of endorsing the arrests by way of a press statement, which was widely reported in the local media. UNMIK subsequently imposed a system of controls and restrictions on demonstrations by way of a "public announcement" on "applicable procedures for public gatherings". The announcement does not indicate the legal basis for the new rules. While recognizing the right of UNMIK to impose reasonable conditions on demonstrations for purposes of public safety, the Special Representative urges UNMIK to clarify the legal basis for these procedures and to ensure that the measures adopted are strictly required by the exigencies of the situation.

28. Three incidents of political and ethnic violence in early 2002 highlighted continuing security concerns in Kosovo, particularly the safety of minorities. Mr. Ismael Hajdaraj, a

member of the Kosovo Assembly from the Democratic League of Kosovo (LDK), was gunned down in front of his home, and two Serbs, one a 57-year-old woman, were killed in apparently ethnic-related attacks.

29. Since the visit of the Special Representative, the funding situation of the Housing and Property Directorate (HPD) and its related agency, the Property Claims Commission, has become acute. There is an urgent need to begin to resolve property issues, particularly those relating to the occupation of houses, flats and other forms of accommodation. The laws relating to property are not clear, nor well known; occupations of property have occurred through intimidation, threats and violence by persons having no right to the properties in question; the institutions charged with resolving property issues, including the civil courts, are all under-funded and ill-equipped to discharge their respective mandates. The Special Representative believes that priority should be given to funding these institutions and that the applicable laws should be clarified and widely disseminated both in Kosovo and in Serbia, and should include an update to the existing compendium of laws prepared by HPD.

Montenegro

30. Intensive negotiations on the relationship between Montenegro and Serbia continued through February 2002 with the active participation of the European Union. No resolution has been reached in spite of the intensified discussions, though a move away from holding a referendum in the spring of 2002 appears to have taken place. The Special Representative notes with concern that the deep political polarization within Montenegro remains and tensions fuelled several violent clashes during the Orthodox holidays in January 2002.

31. In this context, the Special Representative remains concerned about slow progress in and the process for drafting and promulgating key legislative reforms. While individual laws on courts and employment have been adopted, legislation governing a national human rights institution, local self-government, the police, labour, a criminal code and the media are still pending. On a positive note, the Ministry of Justice of the Republic of Montenegro is preparing to institute a national Ombudsman's office for Montenegro. In this context, the Special Representative welcomes the Government of Montenegro's efforts to prepare and adopt legislation to create a national Ombudsman and, in particular, its intention to hold general public consultations, including with OHCHR, the Council of Europe and OSCE on this subject.

32. The Special Representative commends the planned abolition of the death penalty and the inclusion of detailed regulations governing the crime of trafficking of human beings in the draft amendments to the Criminal Code of Montenegro. A second version of the draft is pending a final vote for adoption in Parliament.

33. The Special Representative reiterates his concern over the lack of implementation of the Government's plans for national minorities, in particular in the areas of education and proportional representation in public administration. For instance, while the ethnic Albanian population has primary and secondary Albanian language schools, there is no provision for a special curriculum in accordance with article 71 of the Constitution of Montenegro. He recognizes the step forward represented by the appointment of an ethnic Albanian Chief of

Police in the municipality of Ulcinj, where the ethnic Albanian population constitutes approximately 85 per cent of the total population, and calls on the authorities to follow through on such practices in other areas of Montenegro.

34. The Special Representative notes with concern that the draft amendments to the Criminal Code of Montenegro have not dealt effectively with the existing custodial penalties for slander and defamation. He recognizes that draft amendments cancel the special criminal law protection given to public figures in article 82. Nonetheless, the special criminal protection of symbols remains, as well as the possibility of criminal prosecution by private action.

35. The Special Representative continues to note with concern the absence of public or parliamentary supervision of the police. In the past seven months, nine cases of various forms of police abuse have been alleged and are in the process of investigation in a number of municipalities. The Special Representative notes that there are a similar number of cases in which victims have dropped charges, allegedly owing to pressure exerted by the police and other public officials. The most recent case was the arrest in Bijelo Polje on New Year's Day of a young man who was allegedly severely beaten while in detention and had no access to medical attention. The Public Prosecutor has pressed charges against the police officers concerned for abuse of power by public officials.

36. Finally, the Special Representative recognizes that the unresolved political status of the two republics within the federal structure is an impediment to key institutional reforms, but believes, nonetheless, that practical progress can be made in meeting the Federal State's obligations to provide reports on its implementation of the six human rights treaties to which it is a party. He urges the three entities to collaborate closely in order to submit the outstanding reports as soon as possible.

Notes

[1] Source: Statistics on the implementation of the property laws in Bosnia and Herzegovina, published jointly by the Office of the United Nations High Commissioner for Refugees, Office of the High Representative, the Organization for Security and Cooperation in Europe, the United Nations Mission in Bosnia and Herzegovina, and the Commission for Real Property Claims of Displaced Persons and Refugees, 31 December 2001.

[2] Idem.

[3] Source: International Commission on Missing Persons, General Fact Sheet.